

## REGISTRATION DEPARTMENT.

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To—The District Registrars and Sub-Registrars of Taluks, Mysore and Coorg, Circular Memorandum No. 6 of 1874—75, dated the 14th October 1874.

The Inspector General of Registration has the honor to publish for the information and guidance of the Registering Officers in Mysore and Coorg, the following Resolution of the Government of India, dated 10th July 1874, relative to the construction of Clause 7, Section 18, in connection with Clauses 2 and 3, Section 17, of the Indian Registration Act VIII of 1871.

2. It will be seen that in order to determine whether a document relating to immovable property of 100 rupees and upwards may be treated as registrable *optionally*, it should first be considered whether it is an instrument of the description given in Clauses 2, 3, of Section 17, namely:—

(Clause 2nd).—An instrument (other than a will) which purports or operates to create, declare, assign, limit, or extinguish any right, title, or interest, to or in such immovable property.

(Clause 3rd).—An instrument (other than a will) which acknowledges the receipt or payment of any consideration, an account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.

3. The Government resolution points out that a document which does not in itself create, declare, assign, limit or extinguish any right, title or interest, but is only preliminary to another document having that effect, may be registered optionally.

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*Extract from the Proceedings of the Government of India in the Home Department, (Public), No. 51—1906 under date Fort William, the 10th July 1874.*

Read a letter from the Bombay Government, No. 873—R. 28, dated 17th February last, referring to that Government's resolution of the same date upon the Registration Report for 1872—73, and soliciting a decision as to the interpretation to be put on Clause 7 of Section 18 when read with Clauses 2 and 3, Section 17 of Act VIII of 1871. (The Registration Act.)

*Resolution.*—The question is whether, with reference to documents affecting immovable property of the value of Rs. 100 and upwards, there is any conflict between the provisions of Clause 7, Section 18, of the Registration Act, and between those of Clauses 2 and 3 of Section 17 of the same Act. The Government of India hold that there is no such conflict, and that the question whether a particular document falls under the provisions of Section 18 or under those of 17, can be ascertained by the application in each case of the following rules:—

- (a) Whenever a question arises as to whether the registration of a particular document mentioned in Section 18 (other than a decree or order of Court), which relates to immovable property of the value of Rs. 100 and upwards, is compulsory or optional, it must be solved by construing such document, and ascertaining by means of such construction whether it is an instrument described either in Clause 2 or Clause 3 of Section 17 of the Act, and if it be an instrument answering the description contained in either of the last mentioned clauses, its registration will be compulsory. The provisions of Clause 7, Section 18, are only applicable to documents relating to immovable property of the value of Rs. 100 and upwards which do not come within the scope of Clauses 2 and 3 of Section 17.
- (b) A document merely creating a right to obtain another document which will, when executed, create, assign, limit, or extinguish any right, title or interest to or in immovable property of the value of Rs. 100 and upwards, does not fall within Section 17.

The following (amongst other instances) come within rule (b).

1. A contract for the sale of immovable property of the value of Rs. 100 and upwards.
2. An agreement to give a mortgage of immovable property of the value of Rs. 100 and upwards, following upon a previous deposit of title-deeds creating an equitable mortgage of the same property.
3. An agreement to deposit within a specified time title-deeds as security for a loan and to execute a formal document to carry out the mortgage intended to be created.

2. It has been ascertained that the above rules represent the intentions of the framers of the law. The second rule is, moreover, in conformity with decisions already given by the High Court of Calcutta. The Officers of the Registration Department should accordingly be instructed to take for their guidance the rules above laid down.